



General Assembly

Substitute Bill No. 439

February Session, 2016

* SB00439GAE 032316 *

**AN ACT CONCERNING THE STATE CONTRACTING STANDARDS
BOARD AND REQUIREMENTS FOR PRIVATIZATION CONTRACTS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (21) of section 4e-1 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective from*
3 *passage*):

4 (21) "Privatization contract" means an agreement or series of
5 agreements between a state contracting agency and a person or entity
6 in which such person or entity agrees to provide services that are
7 substantially similar to and in lieu of services provided, in whole or in
8 part, by state employees, other than contracts with a nonprofit agency,
9 which are in effect as of January 1, 2009, and which through a renewal,
10 modification, extension or rebidding of contracts continue to be
11 provided by a nonprofit agency. "Privatization contract" includes any
12 procurement contract entered into on or after July 1, 2016, for which
13 subsequent related services, the total cost of which exceeds fifty
14 thousand dollars per year, will be required;

15 Sec. 2. Subdivision (28) of section 4e-1 of the general statutes is
16 repealed and the following is substituted in lieu thereof (*Effective from*
17 *passage*):

18 (28) "State contracting agency" means any executive branch agency,

19 board, commission, department, office, institution or council. "State
20 contracting agency" does not include the judicial branch, the legislative
21 branch, the offices of the Secretary of the State, the State Comptroller,
22 the Attorney General, the State Treasurer, with respect to their
23 constitutional functions, any state agency with respect to contracts
24 specific to the constitutional and statutory functions of the office of the
25 State Treasurer. For the purposes of section 4e-16, as amended by this
26 act, "state contracting agency" includes any constituent unit of the state
27 system of higher education and, [for] notwithstanding any provision of
28 the general statutes, any quasi-public agency created to provide
29 financing for any such constituent unit, and any quasi-public agency
30 not specifically excluded under this chapter. For the purposes of
31 section 4e-19, "state contracting agency" includes the State Education
32 Resource Center, established under section 10-4q;

33 Sec. 3. Subsection (m) of section 4e-2 of the general statutes is
34 repealed and the following is substituted in lieu thereof (*Effective from*
35 *passage*):

36 (m) [Eight] The lesser of eight members of the board, or a majority
37 of the appointed members of the board, including, [not less than] in
38 either case, at least one member appointed by a legislative leader, shall
39 constitute a quorum which shall be required for the transaction of
40 business by the board.

41 Sec. 4. Subsection (c) of section 4e-13 of the general statutes is
42 repealed and the following is substituted in lieu thereof (*Effective from*
43 *passage*):

44 (c) All state agencies in the executive branch, the constituent units of
45 the state system of higher education and quasi-public agencies shall
46 post all bids, requests for proposals and all resulting contracts and
47 agreements on the State Contracting Portal and shall, with the
48 assistance of the Department of Administrative Services as needed,
49 develop the infrastructure and capability to electronically
50 communicate with the State Contracting Portal. No privatization

51 contract shall be valid unless, at least thirty days prior to execution of
52 such contract, all certifications required by section 4e-16, as amended
53 by this act, have been posted on the State Contracting Portal.

54 Sec. 5. Subsection (p) of section 4e-16 of the general statutes is
55 repealed and the following is substituted in lieu thereof (*Effective from*
56 *passage*):

57 (p) Prior to entering into or renewing any privatization contract that
58 is not subject to the provisions of subsection (a) of this section, the state
59 contracting agency shall evaluate such contract to determine if
60 entering into or renewing such contract is the most cost-effective
61 method of delivering the service, by determining the costs, as defined
62 in subsection (b) of this section, of such service. If the contract is for a
63 total amount of more than one million dollars, the agency shall also
64 provide a business case for such privatization in accordance with the
65 provisions of subsection (d) of this section. The state contracting
66 agency shall perform such evaluation of cost-effectiveness in
67 accordance with a template prescribed by the Secretary of the Office of
68 Policy and Management and such evaluation shall be subject to
69 verification by the secretary. Such template shall require a certification
70 by the state contracting agency that it has complied with all
71 requirements of this subsection and an explanation for the basis of
72 such agency's determination that the provisions of subsection (a) of
73 this section do not apply. If such evaluation of cost-effectiveness
74 includes a determination that there are no savings to the state if the
75 contract is performed by the contractor, the state contracting agency
76 shall not enter into such contract without (1) providing a written
77 report to the secretary concerning the reason such agency seeks to
78 enter into such contract despite a lack of savings, and (2) receiving
79 written authorization from the secretary to enter into such contract. If
80 such contract is not a renewal, the state contracting agency shall also
81 consider and report, in writing, to the secretary whether the quality of
82 services could be diminished by the privatization and any risks
83 associated with the termination or rescission of such contract. The

84 secretary may waive the requirement for an evaluation of cost-
85 effectiveness under this subsection upon a written finding by the
86 secretary that exigent or emergent circumstances necessitate such
87 waiver.

88 Sec. 6. Section 4e-16 of the general statutes is amended by adding
89 subsections (r) to (t), inclusive, as follows (*Effective from passage*):

90 (NEW) (r) A state contracting agency that seeks to enter into or
91 renew a privatization contract shall, not less than sixty days before
92 entering into such contract or renewal, provide written notice to any
93 collective bargaining agent that represents state employees performing
94 work of the type and nature required by the privatization contract.
95 Such notice shall include the information required under subsections
96 (a) to (d), inclusive, of this section, or subsection (p) of this section, as
97 applicable, and shall offer the collective bargaining agent the
98 opportunity to meet with the agency to discuss such information and
99 discuss whether the work could more appropriately be performed by
100 state employees, prior to the contract or renewal being entered into by
101 the agency.

102 (NEW) (s) Any state contracting agency that seeks approval of a
103 contract that could be done more inexpensively by state employees but
104 that determines there is an insufficient number of state employees
105 within such agency to perform the contract shall, not later than sixty
106 days after making such determination, submit a plan to the Secretary
107 of the Office of Policy and Management for preventing a recurrence of
108 such insufficiency by requesting the hiring of additional state
109 employees. The secretary shall, upon the submission of any proposed
110 budget or budget adjustment by the Governor, report to the joint
111 standing committees of the General Assembly having cognizance of
112 matters relating to appropriations and the budgets of state agencies
113 and government administration in accordance with the provisions of
114 section 11-4a, on whether and to what extent such agency plans are
115 included in such submission and the basis for determining whether
116 and to what extent to include such plans in the budget or budget

117 adjustment.

118 (NEW) (t) No state contracting agency may enter into a
119 privatization contract without obtaining the formal approval of the
120 contract from the Attorney General. Prior to entering into any such
121 contract, the agency shall submit to the Attorney General (1) a copy of
122 the proposed contract, (2) any certifications required by this section
123 attached to the contract, and (3) either a certification that the contract is
124 not subject to the provisions of subsection (a) of this section, a
125 certification that the contract was approved by the State Contracting
126 Standards Board or a copy of the written exemption from the
127 requirements of subsection (a) of this section signed by the Governor
128 pursuant to subsection (o) of this section. Any privatization contract
129 entered into on or after the effective date of this section shall not be
130 binding upon the state unless such privatization contract conforms
131 with the requirements of this subsection.

132 Sec. 7. Section 4e-47 of the general statutes is repealed and the
133 following is substituted in lieu thereof (*Effective July 1, 2016*):

134 On or [after January 1, 2011,] before January 1, 2017, each
135 constituent unit of the state system of higher education shall propose
136 regulations to the State Contracting Standards Board to be adopted by
137 the board. The board shall adopt such regulations, in accordance with
138 the provisions of chapter 54, [to apply the contracting procedures, as
139 described in sections 4e-18 to 4e-45, inclusive, to each constituent unit
140 of the state system of higher education] with any modifications the
141 board deems appropriate. Such regulations shall take into
142 consideration circumstances and factors that are unique to such
143 constituent units. Until such regulations are adopted by the State
144 Contracting Standards Board, the provisions of sections 4e-18 to 4e-46,
145 inclusive, shall apply to every expenditure of public funds by any
146 constituent unit of the state system of higher education, irrespective of
147 such funds' source.

148 Sec. 8. (NEW) (*Effective July 1, 2016*) (a) Not later than ninety days

149 after the adjournment sine die of each regular session of the General
 150 Assembly, the Auditors of Public Accounts shall recommend to the
 151 Secretary of the Office of Policy and Management the appropriate
 152 staffing levels at the State Contracting Standards Board that are
 153 sufficient for the board to carry out its statutory duties. In any year
 154 during which the board is staffed at substantially lower levels than
 155 recommended by the auditors, the auditors may issue the compliance
 156 report for each state contracting agency as required under section 4e-6
 157 of the general statutes. If such a compliance report has not been issued
 158 for an agency for three years or more as of December thirty-first of any
 159 calendar year, the auditors shall issue such report not later than April
 160 first of the following calendar year.

161 (b) To the extent the State Contracting Standards Board remains
 162 below the staffing level recommended by the auditors, each state
 163 contracting agency shall designate an employee to serve as a liaison
 164 with the State Contracting Standards Board. Such liaison shall notify
 165 the board of any privatization contract valued at over fifty thousand
 166 dollars and shall provide the board any evaluations or analysis of such
 167 contract not later than ten days after the agency completes such
 168 evaluation or analysis. Electronic communications to the board
 169 directing the staff of the board to postings on the State Contracting
 170 Portal shall constitute sufficient notice under this subsection. Each
 171 state contracting agency shall inform its liaison that any such reporting
 172 is an essential part of such employee's duties.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	4e-1(21)
Sec. 2	<i>from passage</i>	4e-1(28)
Sec. 3	<i>from passage</i>	4e-2(m)
Sec. 4	<i>from passage</i>	4e-13(c)
Sec. 5	<i>from passage</i>	4e-16(p)
Sec. 6	<i>from passage</i>	4e-16
Sec. 7	<i>July 1, 2016</i>	4e-47
Sec. 8	<i>July 1, 2016</i>	New section

Statement of Legislative Commissioners:

In Section 1, "in effect as of" was changed to "entered into on or after" for accuracy and to clarify that the new provisions do not apply to existing contracts, and the provisions were reorganized for accuracy and clarity; in Section 5(p), "If such evaluation of cost-effectiveness includes a determination" was substituted for "If the evaluation determines" for accuracy and clarity, and the brackets around "of cost-effectiveness" were deleted for accuracy and consistency; in Section 6(r) "provided" was changed to "performed", in Section 6(s) "determination" was changed to "insufficiency" and in Section 6(t), "on or after the effective date of this section" was substituted for "after the effective date of this section" for accuracy; in Section 8, "statutory mission" was changed to "statutory duties" for consistency, and in Sections 1, 3, 6 and 7, provisions were reorganized for clarity.

GAE *Joint Favorable Subst.*